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IN THE
COURT OF APPEALS OF INDIANA

BILLY JACK HOLDER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 35A02-0802-CR-158
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable J.R. Heffelfinger, Judge
Cause No. 35D01-0603-CM-247

June 12, 2008

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Billy Jack Holder appeals his conviction for Battery,[1] a class A misdemeanor. Specifically, Holder argues that his conviction must be reversed because the trial court erred in refusing to give his proffered jury instruction on self-defense. Finding no error, we affirm the judgment of the trial court.

FACTS

On December 18, 2005, Holder was incarcerated in the Huntington County Jail on an unrelated charge. At some point, Holder walked into inmate David Sheedy's cell and hit him in the face. Holder then struck Sheedy several more times in the eye and stated, "so you like to beat women." Tr. p. 117, 122.

Sheedy's eye swelled to "about the size of an egg," and it remained closed for approximately two weeks. Id. at 120-21, 128. When Sheedy was able to open his eye, it was "solid blood red" because a number of blood vessels had been broken. Id. Holder sustained some "slight redness" on his knuckles. Id. at 152. Holder eventually admitted to a confinement officer at the jail that "he was the one that beat up David Sheedy," because he "hated women beaters." Id. at 140.

Holder was charged with battery, and at a jury trial that commenced on January 10, 2008, Holder's written statement, which was admitted into evidence, provided:

> I went into [cell block] 127 and I asked if he liked hitting women cuz [sic] he was a f-ing [sic] women beater he said "f-you" [sic] the[n] he swung at me[.] I hit him in the face then I threw him to the floor and hit him once more. Then I told him to get his stuff and hit the door[.] I then exited the room.

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[1] Ind. Code § 35-42-2-1.

State's Ex. 3. Huntington County Sheriff's Deputy Chad Hammel testified that other than the comment that Holder made in his statement, there was no indication that Holder acted in self-defense. Moreover, Deputy Hammel acknowledged that Sheedy had informed him that Holder walked into the cell, tapped Sheedy on the shoulder, and hit him.

Following the presentation of the evidence, Holder's counsel offered an instruction on self-defense. The trial court refused the instruction, determining that the evidence did not support such a defense. More particularly, the trial court commented that "the only evidence in this particular case of anything [regarding self-defense] is the self-serving statement of the Defendant given a day later that the other guy swung first; that is the only evidence that exists in this particular case." Tr. p. 180.

The jury found Holder guilty as charged, and he was subsequently sentenced to one year of incarceration. Holder now appeals.

DISCUSSION AND DECISION

In addressing Holder's contention that the trial court erred in refusing to give his instruction on self-defense, we note that a trial court's decision to instruct the jury is within its sound discretion, and we review that decision for an abuse of discretion. Smith v. State, 730 N.E.2d 705, 706 (Ind. 2000). When determining whether a proffered instruction was correctly refused, we consider whether: (1) the refused instruction correctly stated the law; (2) the evidence supported giving the instruction; and (3) the refused instruction was adequately covered by other instructions. Id. at 706-07.

We also note that before a jury may be instructed on the theory of self-defense, the

defendant must prove that (1) he was in a place where he had the right to be; (2) he acted without fault; and (3) he had a reasonable fear or apprehension of great bodily harm. Ind. Code § 35-41-3-2; Howard v. State, 755 N.E.2d 242, 247 (Ind. Ct. App. 2001). When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. Pinkson v. State, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004). Whether the State satisfied that burden is a question of fact for the jury. Creager v. State, 737 N.E.2d 771, 777 (Ind. Ct. App. 2000).

As discussed above, the evidence presented at trial demonstrated that Holder approached Sheedy in the Huntington County Jail and repeatedly struck hit him in the face and eye while exclaiming, "so you like to beat women." Tr. p. 117, 122. As a result of the attack, Sheedy suffered severe eye injuries, while Holder only sustained some "slight redness" on the knuckles. Id. at 120-21, 152. Holder also admitted "beating up" Sheedy because he "hated women beaters." Id. at 140. Moreover, in light of the written statement that was introduced into evidence, it is apparent that Holder provoked, instigated, or, at the very least, participated willingly in the violence. Thus, Holder cannot successfully claim that he acted in self-defense, and the trial court properly refused his tendered instruction. See Henson v. State, 786 N.E.2d 274, 277-78 (Ind. 2003) (holding that the trial court did not abuse its discretion in refusing to give an instruction on self-defense when the evidence showed that the defendant's actions were not without fault).

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.